



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/170448

PRELIMINARY RECITALS

Pursuant to a petition filed December 2, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc in regard to Family Care, a Medical Assistance (MA) –related program, a hearing was held on April 13, 2016, by telephone. Hearings set for January 7, February 10, and March 16, 2016, were rescheduled at the petitioner’s request.

The issue for determination is whether the Family Care agency correctly reduced the petitioner’s supportive home care (SHC) hours from 20 hours to 12.5 hours daily.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], Care Mgr.
Care Wisconsin First, Inc.
2802 International Lane
Madison, WI 53704-3124

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Oconto County.

1. The petitioner has been eligible for participation in a now defunct MA Community Wiaver program for several years. She was transitioned to the Family Care (FC) program, prompting a review of her care. FC services are furnished through a local care management organization (CMO), which is under contract with the FC program.
2. The petitioner, age 30, resides with her parents. Due to an automobile accident suffered in 2006, the petitioner sustained a traumatic brain injury, and suffers from quadriplegia, aphasia, contractures, constipation, and GERD. She operates an electric wheelchair for all mobility. The petitioner requires physical assistance to perform any activity of daily living (ADL) – bathing, dressing, eating (supervision), grooming, toileting (incontinent, wears briefs), taking medication, transfers, and moving within her home. She also requires hands-on assistance with all instrumental activities of daily living (IADLs) – meal preparation, medication administration, money management, laundry/chores, transportation, and telephone use. The petitioner's IQ is between 75 and 85; she does not wander, and is not dangerous to self or others.
3. The petitioner has been granted 20 hours of SHC daily (144 hours weekly) through a predecessor program. The CMO re-determined the amount of time needed by the petitioner as part of an overdue annual review.
4. Post-review, the CMO tabulated the amount of SHC time needed by referring to a DHS standardized task time table. Using its Resource Allocation Method analysis, the CMO decided to reduce the SHC hours to 12.5 hours daily/87.5 hours weekly. The CMO granted 34.0 hours weekly for ADLs, excluding transfers. The approved time for Medically-Oriented Tasks (transfers, medication administration, three times weekly suppository placement and skin care) was 9.5 hours weekly. An additional eight hours were approved for cleaning the petitioner's bathroom and bedroom, preparing her meals, doing her seven loads of laundry, cleaning her wheelchair, and emptying her garbage. Also weekly, 12.5 hours were approved for a caregiver to take the petitioner offsite to New View for prevocational services. Finally, because the petitioner's mother works away from home, worker time of 24 hours weekly was approved for evenings when the mother is away at work (four nights x 6 hours). The petitioner's mother is also employed by a care agency, REM, as an employee who furnishes 40 hours per week of SHC to the petitioner in their home.
5. *ADLs*: The petitioner requires the 34.0 hours weekly of ADL help approved by the CMO. However, some of the approved ADL time requires supplementation. The petitioner's mother advised the CMO that the petitioner takes a bath three times weekly. The CMO awarded the standard 30 minutes per bathing episode, for a total of 90 minutes weekly. The Wisconsin Department of Health Services' *Personal Care Activity Time Allocation Table*, from *ForwardHealth Update*, No. 2009-08, identifies a standard for a daily bath/shower as requiring 30 minutes of assistance. The petitioner sometimes resists bathing care, so a 25% augmentation for difficult behavior is appropriate, resulting in an award of 112 minutes (90 + 22) weekly for bathing. The CMO awarded adequate amounts of time for dressing, grooming, toileting, medication assistance and ambulation. The CMO did not allot time for taking on/off TEDS stockings; the DHS recommended standard of 35 minutes weekly is appropriately added here. The CMO allotted 45 minutes daily for range of motion exercises, which exceeds the DHS recommendation. The petitioner's ISP (from her own exhibit) states that she requires 45 minutes for ROM daily, so the 45 minute figure is correct.
6. *Disputed Non-ADLs*: The CMO correctly awarded 40 minutes weekly for the cleaning of the petitioner's bathroom, and 10 minutes for dusting/vacuuming her bedroom. Seventy minutes were awarded for changing bedding (10 minutes per episode x 7 days). The CMO approved the standard 10 minutes for meal preparation, for all three meals daily. Because the petitioner's food must be cut up into small pieces, this Judge is adding 10 minutes daily for meal preparation. The CMO correctly awarded the DHS standard time of 15 minutes per laundry load, at one load daily. The CMO awarded 10 minutes weekly for cleaning the petitioner's wheelchair. However, she has

other medical equipment that requires cleaning—a hospital table, shower chair, peddler, stander, lift bar, braces and hospital bed. This Judge will add the additional 30 minutes weekly (rounded down from 35 minutes) requested by the petitioner for cleaning this equipment. The petitioner also seeks cleaning time for a living room that is shared with her parents, a kitchen that is shared with her parents, and a bathroom (not her own) that is accessed by non-parental care workers. The CMO correctly denied SHC time for cleaning those areas. The DHS standard time amounts for the tasks referenced in this Finding are found in DHS’ online *MIDAS SHC Assessment* table.

7. On November 18, 2015, the CMO issued a *Notice of Action* which reduced the SHC hours to 12.5 daily, effective December 3, 2015. After receiving the *Notice*, the petitioner then filed a fair hearing request.

DISCUSSION

The Family Care program is supervised by the Wisconsin Department of Health Services, and is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized at Wis. Stat. § 46.286, and is further described at Wis. Admin. Code, ch. DHS 10.

The CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code § DHS 10.44(2)(f). The ISP must reasonably address all of the client’s long-term needs to assist the client to be as autonomous as possible, while also being cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Id.*, 10.44(1)(f). ISPs must be reviewed periodically. *Id.*, 10.44(j)(5).

I conclude that most of the reduction of FC-paid SHC hours was appropriate. The state code language on the scope of permissible services for the FC reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department’s contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; ... personal care services; ... supportive home care; ... and community support program services.

Wis. Admin. Code §DHS 10.41(2) (June, 2009). Supportive home care (SHC) services are included in the list of covered services in the statutory note above. The Department’s CMO contract is viewable at <https://www.dhs.wisconsin.gov/familycare/mcos/cy2016mcocontract.pdf> . Having established that SHC hours can be a covered service, the question that remains is, how many SHC hours are essential to meeting the petitioner’s needs?

The petitioner disagrees with the CMO’s proffered service plan because it provides 87.5 hours weekly of supportive home care. The CMO based its 87.5 hour figure on observations of the petitioner in the fall of 2015. A specific breakdown of approved task times was proffered by the CMO in Exhibit 1, pp. 25-30.

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

HFS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

1. *Reasonably and effectively addresses all of the long-term care needs* and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. *Reasonably and effectively addresses all of the enrollee's long-term care outcomes* identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. *Is cost-effective compared to alternative services* or supports that could meet the same needs and achieve similar outcomes.

...

(emphasis added)

Wis. Admin. Code §DHS 10.44(2)(f).

In applying the code ISP standards, I conclude that neither party was arguing for the appropriate number of service hours. Helpfully, both the CMO and the petitioner proffered filled-out versions of the *MIDAS SHC Assessment* to identify which care tasks times were in dispute. I concluded that the petitioner requires an additive for combativeness during bathing. A 25% add-on is given for difficult behaviors in Medicaid personal care worker services, so a similar treatment seems appropriate here. I did not augment the dressing and toileting times used by the CMO, because it was already granting more minutes per episode for these tasks than the standard identified in the *SHC Assessment*. The CMO did not allot time for taking on/off TEDS stockings; the DHS recommended standard of 35 minutes weekly is appropriately added here. The CMO allotted 45 minutes daily for range of motion exercises, which exceeds the DHS recommendation. The petitioner's ISP (from her own exhibit) states that she requires 45 minutes for ROM daily, so the 45 minute figure is correct. The petitioner argued for 60 minutes for ROM in her exhibit, and 90 minutes at hearing, which damaged her credibility.

Although the petitioner argued for maintaining the 144 hour weekly allotment, her evidence did not adequately support portions of her argument. She now argues for laundry loads twice daily, in contrast to her statement to the CMO assessor that she required one load daily. She was similarly inconsistent with the respect to ROM time, above. An argument was advanced by the petitioner's mother that the workers need an astonishing 45 minutes (rather than the approved 10 minutes) to dust/vacuum, mop the petitioner's 10 x 12 foot bedroom. This is ridiculous, and caused me further concern as to the mother's credibility. The petitioner also argued that SHC time should be approved for cleaning a kitchen that she shares with her parents, a living room that is not exclusively used by the petitioner, and an extra bathroom that her non-parental caregivers use. The CMO correctly denied cleaning time for all three areas. Finally, the petitioner also requested longer meal preparation times. No credible reason for spending more than the

standard 10 minutes for breakfast preparation was offered. Per her mother's testimony, the petitioner often consumes salads for lunch and dinner, which are possible to prepare within the 10 minute per meal preparation times found in the *SHC Assessment*. I did add cutting-up time as noted in the Findings above.

After tallying the time allotments that I have determined, in my discretion, to be "reasonable" and "cost-effective," a weekly average of 89.25 hours of service time results. The tally, expressed in hours per week, is as follows:

CMO-approved ADLs	34.0
Bathing add-on	0.5
TEDS	0.5
MOTs	9.5
Other weekly tasks	8.0
Food cutting-up	0.25
Clean eqpmt	0.5
New View	12.5
Parent working offsite	<u>24.0</u>
Weekly Total	89.25

CONCLUSIONS OF LAW

1. To meet the petitioner's credible care needs, the petitioner reasonably requires 89.25 hours of SHC service time weekly from the Family Care program.

THEREFORE, it is

ORDERED

That the petition herein be remanded to the CMO with instructions to enter 89.25 hours of weekly SHC time effective December 3, 2015, into the petitioner's current ISP. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

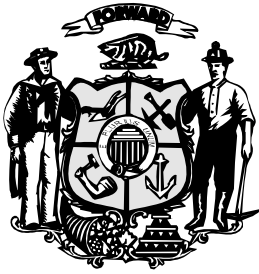
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 28th day of May, 2016

\s\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 31, 2016.

Care Wisconsin First, Inc
Office of Family Care Expansion
Health Care Access and Accountability